

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Union Electric Company, d/b/a AmerenUE)	
Central Illinois Public Service Company,)	
d/b/a AmerenCIPS)	
)	Docket No. 00-0650
Petition for (i) transfer of retail electric)	
business and associated certificates of)	
public convenience and necessity; and)	
(ii) approval of related tariffs.)	
)	
Union Electric Company d/b/a AmerenUE)	
Notice of transfer of distribution and)	
transmission assets and retail electric)	Docket No. 00-0655
business to an affiliate and entry into)	
various agreements pursuant to)	(Consol.)
Section 16-111(g) of the Illinois Public)	
Utilities Act.)	

REPLY BRIEF
OF
THE AMEREN COMPANIES
REGARDING IIEC'S EXCEPTIONS

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Union Electric Company ("AmerenUE") and Central Illinois Public Service Company "AmerenCIPS") (jointly, the "Ameren companies") submit this Brief in response to the Brief on Exceptions submitted by the Illinois Industrial Energy Consumers ("IIEC"). IIEC takes exceptions to the Hearing Examiner's Proposed Order ("HEPO") on a number of grounds. Not letting the facts of record get in the way of a good story, IIEC paints the HEPO as rubber-stamping a proposal by Ameren to steal money and service reliability from Illinois customers for the benefit of Missouri customers and Ameren shareholders. To the contrary, the record evidence (as opposed to IIEC's unsupported musings) demonstrates that AmerenUE's customers will be treated fairly. Those customers will not be denied refunds to which they otherwise would be entitled; they will not incur service interruptions they otherwise would not incur; and they will not face post-transition rate increases that they otherwise would not face.

Moreover, IIEC's apparent distress that its proposals were given short shrift is utterly unjustified. IIEC's proposals were rejected correctly, because they were without factual foundation. No amount of legal argument can salvage a factually flawed presentation.

I. The Transfer Is Not An Anti-Illinois Plot

IIEC suggests that it has uncovered the "true" purpose of the transfers: to benefit Missouri ratepayers and Ameren shareholders at the expense of the unsuspecting Illinois customers. The only basis for IIEC's contention in this regard is a statement in AmerenUE's Missouri filing regarding the "principal purpose" of the transaction from the perspective of Missouri customers. The transfer will indeed save money in the short term for Missouri customers (who are not subject to a rate freeze, as Illinois customers are).

We see no inconsistency between this statement before the Missouri commission and the statements Ameren has made here. The Ameren Companies, through Craig Nelson, explained that there are several reasons for the Transfer:

1. AmerenUE's forecast shows that an additional supply of power and energy beyond its current generation capacity will be required through 2004 and beyond in order to provide for its Missouri and Illinois customers' needs and maintain a 15% reserve margin. AmerenUE forecasts capacity shortfalls of 327 MW in 2001, 410 MW in 2002, 462 MW in 2003, and 583 MW in 2004. These shortfalls will have to be met through the purchase of power and energy at market prices or with the addition of new AmerenUE generation capacity.
2. The transfer of AmerenUE's Metro East service territory in Illinois to AmerenCIPS would include the transfer of 520 MW of net load. This transfer would alleviate AmerenUE's capacity shortfall through 2004.
3. AmerenCIPS has a PSA with Ameren Energy Marketing Company that provides full requirements for AmerenCIPS which will automatically cover the transferred load, thus assuring Metro East customers an adequate power supply. The PSA will insulate Metro East customers remaining on bundled tariffs from the volatility of market prices through 2004.
4. The Transfer will insulate these customers remaining on bundled tariffs from any meaningful risk of a rate increase through the term of the PSA, December 31, 2004.

5. The transfer will assure an adequate power supply for the former AmerenUE Metro East customers, while maintaining the same rates that were in existence before the transfer. AmerenCIPS intends to maintain the same rate schedules that were in existence immediately prior to the transfer.
6. Ameren anticipates administrative cost savings after the transfer. The elimination of one utility in Illinois will decrease the number of regulatory filings required of Ameren. As an example, Section 16-125(b) of the Act requires each utility in Illinois to file an electric reliability report including the results of a survey of customers. The transfer will enable Ameren to consolidate the reports and eliminate the cost of a separate and redundant survey in the former AmerenUE territory. It will also provide for a single point of contact in AmerenCIPS for regulatory matters in Illinois.
7. The pending version of the Standards of Conduct and Functional Separation Rules for Illinois Utilities imposes different levels of compliance on electric utilities based on the location of their principal service territory. After the Transfer, the functioning of Ameren's retail electricity business in Illinois will be subject to a consistent set of rules governing energy supply activities within the utility. In addition, the Transfer will provide a clean split between Ameren's activities in Illinois and Missouri, which is not deregulated at this time.

8. The transfer will terminate the obligation of AmerenUE's Illinois customers to pay decommissioning charges related to AmerenUE's Callaway nuclear plant.

Ameren Ex. 1, App. G, pp. 8-10.

Moreover, Mr. Nelson explained that, from the perspective of customer contact, there will be little in the way of noticeable change. Id., pp. 11-12. The same people will be using the same systems, procedures and processes and will continue to deliver the high quality service our customers have come to expect. Existing systems and processes of handling customer reported outages and other problems will not change. Id.

Thus, Ameren has explained the benefits of the transfer for Missouri customers to the Missouri commission and the benefits for Illinois customers to the Illinois commission. The fact that Missouri customers will also benefit is no reason to deny the transfer. Spite is not a valid basis for a regulatory order, and IIEC's harrumphing regarding the effect of the transfer on Missouri customers should be disregarded.

II. There Will Be No Adverse Effect on Reliability

IIEC's principal objection the transfer is its (erroneous) view that the transfer will alter the reliability of service under AmerenUE's current interruptible rate. It is difficult to imagine how an interruptible rate can be made less reliable. A customer contracting for interruptible service agrees to take service that is not firm. The utility does not plan for the load, and sheds it when the capacity serving the load is needed to serve firm load. Moreover, there are no restrictions on a utility's ability to make firm sales. In exchange for non-firm service, the customer pays rates that are a fraction of the rates that a firm customer pays.

It is well-known by this Commission that the incidence of interruptions can vary significantly from year to year, influenced by factors such as peak loads, load growth, firm sales, capacity additions, capacity losses (outages), transmission availability, and so forth. In short, interruptible customers have no guarantee as to the availability of service on any given day, or that its interruptible experience in one year will bear any resemblance to its experience in the next. In other words, what seemed like a good gamble (and it is a gamble) in Year 1 may prove to be very bad bet in Year 2. Of course, interruptible customers are not without remedy; they may switch to firm service (and pay firm rates) if they find that they are actually interrupted when they take interruptible service.

There is no assertion that the transfer will in any way affect firm service. To the contrary, the record reflects without contradiction that, after the Transfer, AmerenCIPS will continue to provide safe and reliable utility service. The PSA with AEMC, initially, and later the wholesale market, will provide AmerenCIPS with a safe and reliable source of electric supply. Moreover, AEMC has adequate capacity to serve the existing AmerenCIPS load and the AmerenUE load that is to be transferred. AmerenUE provided a load-resource analysis for AEMC for the years 2001-2004. Ameren Ex. 1, App E. That analysis shows that AEMC has adequate existing resources to serve the post-transfer AmerenCIPS load. Id.

Staff did not question Ameren's ability to provide reliable service. Indeed, Staff witness Larson agreed that the Ameren Companies had demonstrated that they would have adequate capacity to serve the Metro East load. Staff Ex. 3, p. 3.

Nevertheless, IIEC complains that the HEPO did not find that the transfer would adversely affect the ability of Ameren to serve interruptible load. IIEC witness Mr. Stephens expressed “concern” that interruptible customers might experience an increased level of

interruptions because of the transfer. There are two reasons why this concern should be disregarded: there is no obligation to serve non-firm, interruptible load; and the record demonstrates that the transfer will not alter the operation of the interruptible tariff.

First, and most significantly, interruptible customers do not have any expectation of uninterrupted service. They have contracted for non-firm service, and the utility providing it has no obligation to limit the number of interruptions. If interruptible customers want firm service, they can request it, and pay for it, under the terms of the utility's tariff. As Mr. Nelson explained, utilities have no capacity planning or reserve obligation toward interruptible customers. Tr., 58-60. To the contrary, for planning reserve purposes, utilities exclude interruptible load. Id. It is not included in the peak that utilities must have capacity to serve, and utilities do not add capacity to serve interruptible load. Id.

Second, Mr. Nelson explained that the transfer will not produce any change in the operation of the interruptible tariff. Currently, AmerenUE's interruptible customers are served as part of a single, integrated control area system. They will be customers on that same system after the transfer. There will be no change in applicable planning or operating reserve requirements or margins, and the total system load, annual system peak and resources will be exactly the same before the transfer as after. AmerenUE, AmerenCIPS and Ameren Energy Marketing Company (AmerenCIPS' supplier) each maintain a minimum planning reserve margin of 15%. Ameren Ex. 2, p. 7.

IIEC argues, in effect, that Ameren is misinterpreting its own tariff and that the terms of the tariff do not allow Ameren to operate in the manner in which it has been operating (irrespective of whether the transfer occurs). If IIEC believes that Ameren has been misapplying the tariff and that interruptible experience would have been better under a different

interpretation, it is free to pursue that claim in a different proceeding. The record is clear, however, that Metro East interruptible customers will not be treated any differently after the transfer than before. Accordingly, IIEC's exceptions in this regard are baseless.

III. Metro East Customers Will Not Forego Refunds

IIEC contends that the HEPO will improperly deny Metro East customers refunds of excess earnings that they otherwise would have received were the transfer not to occur. IIEC dismisses, without any analysis, the extensive record evidence showing that it is highly unlikely that AmerenUE would be required to make refunds absent the transfer. IIEC instead relies on "legal argument" that it claims the HEPO disregards. The HEPO does not disregard IIEC's position; rather, the HEPO adopts the position supported by substantial evidence (Ameren's) and rejects the one supported by no evidence (IIEC's). The Commission likewise should reject IIEC's argument.

The Commission should also reject IIEC's alternative proposal to require AmerenCIPS to refund \$2.3 million annually to Metro East customers. This amount is based on a refund that AmerenUE was required to make under statutory criteria that have since been changed, and that, as the record shows, will eliminate the need for further refunds.

Section 16-111(e) requires electric utilities to refund "excess earnings" during the mandatory transition period to ratepayers. The term "excess earnings" is defined as the two-year average return on common equity (measured as of September 30 of each year) in excess of the average 30-year treasury rate for the same two year period plus an "Index" plus 1.5 percentage points. For 1998 and 1999, for both AmerenUE and AmerenCIPS, the Index was 4.00 percentage points. Ameren Ex. 2, p. 2. For 2000 through 2004, it will be 7.00 percentage points. AmerenUE was required to make refunds for the 1998-99 period, and Ameren expects that

AmerenUE will have to make a smaller refund for 1999-2000 (because of the increase in the Index from 4.00 to 7.00 percentage points in 2000, producing an average Index of 5.5 percentage points). Id.

IIEC argues that, because AmerenUE has made refunds for the 1998-99, it is possible that AmerenUE would have to make such refunds going forward. This is not the case. The increase in the Index effective in 2000 will eliminate AmerenUE's "excess earnings" and, regardless of whether the transfer occurs, AmerenUE will not be required to make refunds.

To demonstrate this point, Ameren performed an analysis that assumed that the future yields on 30 year treasury bonds would be 6%, which produces a refund "trigger point" of 14.5%. The trigger point is calculated by adding the yield on the 30 year treasury bonds (6%) plus the Index (7%) plus 1.5%, for a total of 14.5%. Ameren then compared this figure with the forecasts of AmerenUE's return on common equity for Metro East for the years 2000-2004, using the methodology set forth in Section 16-111(e). In this regard, Ameren assumed customer load retention of 100%, to give effect to Mr. Stephens' assumption that AmerenUE will lose no load to competitive suppliers. Ameren Ex. 2, p. 2.

The analysis showed that, using the statutory methodology, for no future two year period will AmerenUE's Metro East return on common equity exceed the applicable trigger point. Moreover, Ameren's analysis was extremely conservative. It assumed, as mentioned, no load loss -- meaning a maximization of revenue. Further, Ameren did not adjust the cost of service to reflect any increased generation costs that would result if AmerenUE were to remain responsible for the Metro East load and, therefore, had to purchase additional capacity. Thus, Ameren assumed maximum revenues and minimum costs, and still the analysis showed that no refunds

would be required. Accordingly, there is no need for concern on the part of the Commission that the transfer would avoid any refund that would otherwise accrue.

Moreover, IIEC's reference to the treatment on gains of transfers of assets being reflected in the analysis under Section 16-111(e) is completely inapposite. There will be no gain on the transfer of Metro East assets because those assets are being transferred at book value.

Lastly, nothing about the HEPO violates Section 16-111(e), contrary to IIEC's position. That section requires annual reports and that it exactly what AmerenCIPS will provide. Metro East customers will pay the same rates they pay now, only under AmerenCIPS tariffs, and AmerenCIPS will report the earnings for all of its customers to the Commission, as the statute requires. To the extent that AmerenCIPS experiences excess earnings, Metro East customers will share in the resulting refunds with the rest of AmerenCIPS' customers.

IV. Post-Transition Rates Are Not An Issue

IIEC argues that the transfer is problematic because, in IIEC's view, it will result in a rate increase after the rate freeze expires. There are numerous deficiencies in IIEC's presentation, not the least of which is that it cites no evidence in support of this position. IIEC addresses the current cost of generation reflected in AmerenUE's rates, but does not provide a forecast of future generation prices, either to AmerenUE or in the marketplace in general. It simply assumes that AmerenUE's cost of generation will not change and that market prices five years out and beyond will be higher than what AmerenUE's current rates reflect. For that reason alone, IIEC's exception should be rejected.

Moreover, this concern raises a policy issue that really should not still be an issue. It was resolved when the Customer Choice Law was adopted. What AmerenUE and AmerenCIPS are trying to do here in Illinois is separate the delivery (or "wires") function from the generation and

marketing functions. This is accomplished by having vertically integrated utilities transfer (by sale, assignment or otherwise) their generation to affiliated or unaffiliated entities. This is a fundamental goal of the Illinois restructuring, so long as it does not jeopardize reliability or create the risk of a base rate increase during the transition to market-based pricing. Once that transition period is complete, there is no legal or policy barrier to implementing market-based pricing, especially for large, industrial customers like IIEC.

The General Assembly sought to separate the two functions, by requiring the Commission to develop rules regarding functional separation and by encouraging electric utilities to restructure their operations (i.e., move generating assets outside of the utility). This encouragement was provided by adopting provisions that give electric utilities the ability to expeditiously transfer their generating plants to affiliated or unaffiliated entities. Section 16-111(g) of the Customer Choice Law expressly allows them to do so, subject only to two narrow considerations: 1) whether reliability would be jeopardized by the transfer; and 2) whether the transfer would undue risk of a base rate increase during (not after) the transition period. For what should be obvious reasons, the General Assembly did not place any restrictions on transfers related to whether ratepayers would face market-based generation pricing after the transition to market-based generation pricing.

The Commission should not place any such restrictions on this transfer, for at least two reasons. First, it would be contrary to the goals of the Customer Choice Law. The Customer Choice Law is intended to bring about competitive, market-based pricing for generation after the transition period. That is precisely what this transfer will accomplish. Second, the Commission has allowed other utilities to put the overwhelming majority of the electric load in this state in the same position, and should not single out Metro East for different treatment. AmerenCIPS

and Illinois Power have both divested themselves of all of their generation, and Commonwealth Edison has divested itself of all of its fossil generation, pursuant to the provisions of Section 16-111(g). Ameren Ex. 2, pp. 4-5. Those companies replaced the transferred generation with power supply contracts that expire on December 31, 2004, meaning that they will have to rely on market sources beginning January 1, 2005, when the rate freeze expires. Id. Further, the Commission has approved (also under Section 16-111(g)) ComEd's proposal to transfer all of its nuclear generation to an affiliate, to be replaced by a power supply agreement, which expires at the end of 2006, and under which the final two years will have market-based pricing. Id. In other words, all customers of ComEd, Illinois Power and AmerenCIPS -- roughly 92% of the retail electric customers in the State -- may be assessed rates which reflect market-based generation costs beginning in 2005. Id. Moreover, it is appropriate that customers in a deregulated market pay market-based generation charges. That is what a deregulated generation market is. That is why the rate freeze expires when it does -- at the end of the transition to market-based pricing. At that point, any remaining bundled rates of electric utilities may be adjusted up or down to reflect the cost to utilities of acquiring power to serve their remaining bundled customers. Id.

Indeed, Staff witness Larson noted that, "because the Commission has lost jurisdiction over the majority of the power supply in Illinois, the additional loss of jurisdiction over AmerenUE's Illinois load is of little consequence." Staff Ex. 3, p. 4. It would not be appropriate to treat Metro East customers differently from customers of other utilities.

In the Customer Choice Law, the General Assembly did not place any restrictions on changes in rates to reflect market prices after the transition to a deregulated generation market. IIEC apparently reads the Customer Choice Law differently. What IIEC plainly seeks here is not

a deregulated market at all. Rather, IIEC apparently views the General Assembly's movement to a deregulated market as a hedge. If generation costs from utility-owned generation exceed market prices, IIEC sees the market as a safety valve. If, however, market prices exceed the cost of utility-owned generation, IIEC wants the utility to be required to provide service at regulated prices. In other words, the utility bears the risk of owning generation assets in a competitive world, but cannot assess competitive prices for the generation. This is completely inconsistent with the Illinois deregulation model, which expressly allows utilities to restructure their operations by transferring the costs and benefits associated with generation to another entity, and does not require utilities to either obtain or retain generation in order to provide service at below market prices.

Further, we note that the same result could be achieved at least two other ways. First, if the transfer is denied, AmerenUE could transfer its generating assets to the Ameren Genco under Section 16-111(g), just as AmerenCIPS did (and as Illinois Power has done and ComEd is doing). In connection with such a transfer, the Commission would have no jurisdiction to review the effect of such a transfer on post-transition rates. Second, AmerenUE could declare its industrial rates competitive. Under either scenario, IIEC ends up in the same position that it will end up after the transfer at issue in this proceeding.

V. IIEC's Request For AmerenUE Earnings Projections Is Pointless

As its final objection to the HEPO, IIEC argues that the record is incomplete because Ameren did not present post-transfer earnings analyses for AmerenUE. We cannot imagine a more pointless exercise. Under Section 16-111(g), the Commission may reject the transfer if there is a "strong likelihood" that the transfer would cause ratepayers to be subject to a rate increase request under Section 16-111(d) during the mandatory transition period. The projected

returns on equity in the record amply demonstrated that there is very little risk that AmerenCIPS would be entitled to request a base rate increase under Section 16-111(d). That subsection authorizes a utility to seek a base rate increase where it can demonstrate that the two-year average of its return on equity is below the average of the monthly yields of 30 year Treasury bonds for the same period. Treasury bond yields have averaged approximately 5.79% for the two year period ending June, 2000. By contrast, and based on very conservative assumptions, the lowest annual projected return on equity, with the transaction, was significantly above that level.

Ameren did model AmerenUE's ROE if the transfer did not occur, as explained in Section III, above. It did not model a post-transfer ROE because there was simply no reason to do so. If the transfer of assets occurs, it will only occur in connection with a contemporaneous transfer of certificates, which means that AmerenUE then will no longer serve Metro East; rather, AmerenCIPS then will serve those customers. Accordingly, it is AmerenCIPS ROE that is relevant to those customers and that is what Ameren modeled. AmerenUE's ROE would be completely irrelevant and, not surprisingly, Ameren did not model it.

This last-ditch effort to thwart the transfer should be rejected.

WHEREFORE, for all the reasons set forth herein, AmerenUE and AmerenCIPS respectfully request that the Commission approve the Hearing Examiner's Proposed Order, without modification.

Respectfully submitted,

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Certificate of Service

Christopher W. Flynn, an attorney, hereby certifies that he caused copies of the accompanying Initial Brief of the Ameren Companies to be served on the following individuals via e-mail and U.S. first-class mail this 29th day of November, 2000.

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